the carriers' relative compensation obligations based on total toll revenues"). Indeed, AT&T is particularly vehement that LECs be required to contribute in proportion to total toll revenues. See AT&T Comments at 21-22 ("The Commission should base the LECs' allocation of the interim obligation on all of their interstate and intrastate toll revenues.").

How AT&T and MCI could propose such a methodology is a mystery, given that precisely this methodology was rejected -- at their request -- by the Court of Appeals. On appeal, AT&T, MCI and others decried the Commission's allocation of the interim compensation obligation among carriers, insisting that total toll revenue "bears no necessary relationship to each IXC's volume of compensable calls." Joint Brief of IXCs at 39; see Reply Brief of Petitioners Telco Communications Group, Inc. and Excel Telecommunications, Inc. at 3 (D.C. Cir. Apr. 21, 1997) (the FCC "made no factual findings regarding whether a carrier's toll revenues has any relationship to the number of payphone calls carried."). Indeed, they not only challenged that system but prevailed. Convinced by these arguments, the Court of Appeals remanded on the grounds that the FCC did not adequately justify why it based its interim plan on total toll revenues, as it did not establish a "nexus between total toll revenues and the number of payphone-originated calls." Illinois Pub. Telecom., 117 F.3d at 565.

Now that the case is on remand, neither AT&T nor MCI makes any effort to establish the "nexus between total toll revenues" and the number of compensable calls that AT&T and MCI themselves demanded on appeal. (Instead, AT&T obliquely states that "there do not appear to be any data linking payphones with 800 subscriber calls, which comprise a significant majority of all compensable calls." AT&T Comments at 20. MCI is entirely silent.) Consequently, this proposal must be rejected for the very reasons given by the interexchange carriers, and accepted by the Court, on appeal. Simply put, there is no nexus between total toll revenues and

compensable call volumes and no carrier -- not AT&T, not MCI, not Sprint -- has attempted to supply one. See C&W Comments at 16 ("there is no nexus between total toll revenues and the number of payphone-originated calls").

In fact, toll revenues are a particularly poor proxy for compensable call volumes in the case of LECs. Under AT&T's approach, about 12 percent of the interim compensation obligation would be placed on LECs, as they carry around 12 percent of total toll calls.[35] But there can be no contention that the LECs carry 12 percent of all compensable payphone calls. To the contrary, the number is far smaller -- in the range of 3 percent. Andersen Remand Reply Report at 12.

Unlike interexchange carriers, LECs earn a very small portion of their toll revenue from potentially compensable calls. For example, interexchange carriers earn, on average, approximately 13 percent of their total revenues (of $80 billion or so) from subscriber 800 calls.[36] In contrast, only about 3 percent of LEC toll revenues comes from subscriber 800 calls.[37] Consequently, basing interim compensation requirements on total toll revenues (rather than

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35. The total interLATA toll market is approximately $80.04 billion, and the intraLATA toll market is approximately $11.25 billion. Consequently, intraLATA toll calls make up about 12 percent of the combined toll market of about $91.29 billion. Andersen Remand Reply Report at 11 & n.26; see nn. 36-37, infra.

36. According to Frost and Sullivan, the interLATA subscriber 800 revenue in 1996 was approximately $10.8 billion. Andersen Remand Reply Report at 12. The total interLATA toll revenue market for 1996 was approximately $80.04 billion. FCC, Preliminary Statistics of Common Carriers, June 1996, at Table 1.4. Consequently, on average, interexchange carriers earned about 13 percent of their revenues from subscriber 800 calls. See Andersen Remand Reply Report at 12.

37. According to Frost & Sullivan, intraLATA subscriber 800 revenue in 1996 totaled $290 million. Andersen Remand Reply Report at 12. Total intraLATA toll revenue for LECs in 1996 was approximately $11.25 billion. FCC, Preliminary Statistics of Common Carriers, June 1996, at Table 1.4. Consequently, LECs earned about 3 percent of their total toll revenues from intraLATA subscriber 800 calls. See Andersen Remand Reply Report at 12.

subscriber 800 revenues, for example) overstates LEC responsibility for subscriber 800 calls -- calls that by AT&T's own admission "comprise a significant majority of all compensable calls" -- by 300 percent. See Andersen Remand Reply Report at 12. Looking to actual Coalition member data, rather than reported statistics for all LECs, yields precisely the same results. Ibid.

Relying on total toll revenues similarly inflates LEC responsibilities with respect to access code calls. While AT&T and MCI strive mightily to show that *some LECs* have access codes, and that *some* have used 800 numbers for access codes, AT&T Comments at 21; MCI Comments at 6, they simply cannot contend -- and nowhere do they -- that LEC access code volumes even remotely approach 12 percent of all access code calls. Indeed, unlike the large interexchange carriers like MCI, AT&T, and Sprint, most LECs do not even have 10XXX access codes. And, contrary to AT&T's arguments, not all of them even offer pre-paid calling cards or 800 access code numbers. Andersen Remand Reply Report at 11. Those that do, moreover, have had limited success. Their services are still largely new and lack the popularity of AT&T's 1-800-CALLATT or MCI's 1-800-COLLECT. AT&T and MCI do not argue otherwise. Indeed, any such argument -- or even arguing that revenues from these services are proportionate to total LEC toll revenues -- would be false and frivolous. See Andersen Remand Reply Report at 1, 10.[38]

Andersen's study, which looked at direct measures of compensable call volumes from LEC payphones, confirms this. Andersen calculates that, on average, one LEC access code call is made from each payphone each month. Andersen Remand Report at 15. Similarly, only about

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[38] Relying on total toll revenues would similarly distort the results for LECs that participate in the interexchange market. Unlike non-LEC IXCs, whose toll revenues include very little intraLATA toll traffic, IXC LECs derive a significant portion of their revenue from intraLATA toll calls. As a result, a smaller percentage of their total toll traffic would be made up of subscriber 800 and access code calls.

four LEC subscriber 800 calls are made on each payphone each month. Ibid. Thus, of the 131 to 151 compensable calls made from each payphone each month, fewer than 5 -- less than 3.5 percent -- are carried by a LEC.[39] AT&T and MCI's efforts to foist 12 percent of the burden of interim compensation on LECs thus cannot be reconciled with the empirical data.[40]

Given the small number of subscriber 800 and access code calls carried by each individual LEC, the Commission was well within its discretion in the Reconsideration Order when it refused to require non-IXC LECs to make any per-call compensation payments at all. See Recon. Order, 11 FCC Rcd at 21290-91, ¶ 126. Nonetheless, following a principled path, the Coalition has suggested that LECs should participate in interim compensation even if individual LEC contributions are relatively small. But it is manifestly unprincipled -- and legally unsupportable -- for carriers like AT&T and MCI to insist that LECs contribute to interim compensation far in excess of the volume of compensable calls they carry. Moreover, for AT&T and MCI to pursue this result by promoting precisely the measure they attacked and the Court of Appeals rejected on appeal -- total toll volumes -- is not only unprincipled but shameless. The LECs are willing to contribute their fair share. But they cannot be required to, and will vigorously oppose any effort to, make them pay some of AT&T's and MCI's fair share as well.[41]

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39. This average, it should be noted, cannot be used to calculate individual obligations. The numbers vary widely from Coalition member to Coalition member, and thus reliance on industry-wide averages would not yield an appropriate allocation.

40. International Telecard's bizarre proposal (Comments at 9) -- that responsibility be allocated based on total toll revenues, *plus* switched access charge revenues -- must be rejected for similar reasons. This, of course, would place most of the burden on the LECs (who are the only ones who derive switched access revenue), even though very little switched access revenue is attributable to payphone calls.

41. For similar reasons, WorldCom's proposal (at 6-7) that the Commission use total toll revenues, while excluding carriers with no revenues for certain categories of calls, must be rejected. Just as some carriers have no revenues for some categories of calls, some have very little revenue, or disproportionately little revenue, in comparison to their total toll revenues. This

2. *The Commission Cannot Rely on Total Toll Revenues Even as a Starting Point*

Recognizing that total toll revenues is not an appropriate measure for interim compensation, some carriers suggest that the Commission *start* with total toll revenues and allow waivers for carriers who can track compensable calls. See Excel/Telco Joint Comments at 5; see also Midcom Comments at 9. This approach has two defects.

First, only those carriers that can *reduce* their obligation (such as, not surprisingly, carriers like Excel and Telco) will make an effort to track their calls so as to reduce their contribution. The result inevitably will be less compensation for PSPs than that to which they otherwise would be entitled.

Second, even the starting point -- total toll revenues -- bears no "necessary" relationship to compensable call volumes. In rejecting the Commission's per-call compensation calculation, the Court of Appeals made it abundantly clear that even starting points must be rational. Even though the parties, it agreed, could depart from the per-call rate by negotiation, the Court held that the starting point -- the default rate -- had to be based on appropriate evidence and reasonable findings. See Illinois Pub. Telecom., 117 F.3d at 565. Relying on total toll volumes simply cannot provide that rational starting point.

Perhaps for these reasons, some carriers argue that the Commission should allow each party to estimate its own responsibility. Common sense and human experience demonstrate that this is a recipe for disaster. Even friends at a restaurant rarely come up with enough money when each individual estimates how much he or she should contribute to the check. There is no reason to expect the result in this industry to be any different.

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too must be taken into account when establishing interim compensation obligations.

3. *If the Commission Must Rely on a Total Toll Volume Measure, Subscriber 800 Revenues Are the Most Appropriate*

Given that those who opposed the Commission's prior mechanism have willfully failed to come forward with a workable mechanism for interim compensation -- perhaps in the vain hope that the Commission will abandon its efforts altogether -- the Coalition feels compelled to propose a replacement. Because two-thirds of all compensable calls are 800 calls, it makes sense as an initial matter to allocate the interim compensation obligation based on total subscriber 800 revenues. See AT&T Comments at 20 (subscriber 800 calls "comprise a significant majority of all compensable calls"); see also Report and Order, 11 FCC Rcd at 20603-04, ¶ 124. Indeed, because there is no reason to believe that the distribution of payphone-originated subscriber 800 calls will differ from the distribution of subscriber 800 calls generally, allocating interim compensation burdens at least in part on 800 revenues is not only appropriate, but inescapable.

Reliance on subscriber 800 revenues is helpful for yet another reason: Publicly available market share data exists. Frost and Sullivan, for example, has published a report (available on LEXIS, MKTRES library, FNSRPT file) that allocates 97.9 percent of the interexchange carrier subscriber 800 market among the leading carriers.[42] If Frost and Sullivan's report is adjusted to include intraLATA 800 revenues, it still allocates about 95 percent of revenues.[43] The remaining

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[42] See Frost and Sullivan, U.S. Toll-Free and 900/976 Number Services Market, March 1997, Figure 4-9 -- Domestic Interexchange Carrier Toll-Free Services Market: Company Market Share by Revenues (U.S.), 1992, 1996. According to Frost and Sullivan, AT&T holds 53.4 percent of the market, MCI has 24.7 percent, Sprint has 12.9 percent, WorldCom has 3.8 percent, Frontier has 2.2 percent, LCI International has .9 percent, and the remaining 2.1 percent is divided among approximately 50 other carriers. Ibid.

[43] Adding intraLATA toll call revenues (estimated by Frost and Sullivan to be $288 million) to the $10.8 billion toll-free market (also a Frost and Sullivan estimate) reduces the percentage allocated to each carrier identified in the preceding footnote by approximately 2.5 percent. Thus, AT&T's share would be 52.1 percent, MCI's would be 24.1 percent, Sprint's would be 12.6 percent, WorldCom would have 3.0 percent, and Frontier would have 2.1 percent, and LCI

5 percent can be allocated based on subscriber 800 data supplied by each individual company in the market.[44]

Allocating interim compensation obligations based on subscriber 800 revenues is thus more likely to reflect actual compensable call volumes than reliance on total toll revenues. It should almost perfectly reflect the distribution of subscriber 800 calls, which constitute two-thirds of compensable calls. Moreover, it is not a bad proxy for access code calls, either. The largest subscriber 800 carriers also are the owners of the most popular dial-around numbers.

Of course, even reliance on subscriber 800 revenues may produce a less than ideal approximation. There may be carriers that have large subscriber 800 volumes, and very little access code volumes, or vice versa. As a result, the Coalition proposes that, while subscriber 800 revenues be used as a proxy in the first instance, the Commission conduct a true-up based on actual tracking data.

In particular, the Commission should require each interexchange carrier to report to the Commission the number of compensable calls it carries during the three months following October 7, 1997. Using that data, the Commission should determine the percentage of traffic carried by each carrier, and determine the "final" interim compensation obligation of each carrier based thereon. Those carriers that overpaid should get refunds, and those that underpaid should pay more. Although this solution is far from ideal, it ensures that each carrier begins by paying an amount that roughly approximates its share of traffic but ultimately pays no more -- based on actual tracking data -- than it realistically should.

International would have .87 percent.

[44] To the extent companies refuse to provide this data, the Commission is free to conclude that they have waived any right to oppose the use of an alternative methodology, such as total toll revenues.

C. The Commission Must Ensure Fair Compensation on 0+ Calls from RBOC and GTE Payphones and RBOC and GTE Inmate Payphones

The mandate of the Court of Appeals was clear: Failure to provide interim compensation for 0+ calls made from RBOC and GTE payphones and calls made from their inmate payphones cannot be reconciled with Congress's requirement of compensation for "each and every" completed call. Illinois Pub. Telecom., 117 F.3d at 566. None of the commenters deny this. Nonetheless, various commenters attempt to concoct excuses for not paying the compensation (in whole or in part) despite this clear mandate. Their attempts are unavailing.

1. *The Court of Appeals' Mandate Requires the Commission to Provide Interim Compensation for RBOC and GTE 0+ and Inmate Payphone Calls*

Perhaps the most inventive argument is proposed by Frontier. According to Frontier, no compensation is required on these calls because the recipients are LECs, and LECs "*already* receive compensation on 'each and every completed' . . . call from their payphones" in the form of access charges. Frontier Comments at 13. Frontier, however, has confused the purpose of access charges. Access charges compensate LECs for the use of their network in originating and terminating calls. Access charges do not include compensation for the use of LEC payphones, and have not since the Commission ordered the removal of payphone cost elements effective April 15, 1997.

MCI and Frontier together argue that there is no need to provide interim compensation because BOCs "have not demonstrated" that they are eligible for this compensation. Frontier Comments at 10-11 n.27, 14; see MCI Comments at 8-9. But nothing in the Commission's orders requires the BOCs and GTE to prove that they are eligible for per-call compensation to the satisfaction of the likes of Frontier and MCI. To the contrary, the Commission's orders require only that they "be able to certify" that they have complied with the requirements set forth by the

Commission. Recon. Order, 11 FCC Rcd at 21293, ¶ 131. Every Coalition member is "able to certify" compliance with the prerequisites, and many if not all already have sent this certification to Frontier and MCI.

Moreover, the Commission already has rejected precisely the "proof" requirement MCI and Frontier now seek to impose. AT&T previously asked the Commission to require "LECs [to] show proof that its intrastate tariffs have removed payphone subsidies." Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, DA 97-805, CC Docket No. 96-128, ¶ 22 (Apr. 15, 1997). The Commission rejected any such requirement, noting that LECs need only "be able to certify" that it has met eligibility requirements. Ibid. (quoting 11 FCC Rcd at 21293, ¶ 131.) The most AT&T and other carriers can require of the LECs is that they "provide such certification for each prerequisite." Ibid. Since such certification already has been provided, these grounds for non-payment are frivolous. If the carriers want to look behind that certification, the Commission has held that their remedy is to file a complaint under Section 208. Order, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, DA 97-678, CC Docket No. 96-128, ¶ 30 n.93 (Apr. 4, 1997). It is not for them to willfully disobey the Commission's orders, or file frivolous and unsupported accusations of non-compliance in the guise of remand comments.

Besides, while this is not the forum in which to litigate these issues, Coalition members all have complied with Commission requirements. They have removed payphone subsidies. They have filed effective CAMs. Memorandum Opinion and Order, Local Exchange Carriers Permanent Cost Allocation Manual for the Separation of Regulated and Nonregulated Costs, DA 97-1244 (rel. June 13, 1997). The Bureau has approved their CEI plans and their filing of federal

and state tariffs for unbundled, payphone-specific network features and functions.[45] And the interexchange carriers have offered no evidence that these requirements have not been met. Their contentions regarding ineligibility, and their efforts to escape payment of fair compensation for "each and every call," therefore must be rejected for what they are: self-serving attempts to continue an unjustified and statutorily prohibited free-ride on the backs of LEC PSPs.

Finally, MCI (but no one else) asks the Commission to reconsider the requirement of compensation for 0+ calls from RBOC and GTE payphones, as well as compensation for calls from inmate payphones. See MCI Comments at 8-9; 9-10. According to MCI, the RBOCs and GTE now can obtain per-call compensation either from the location provider, or from the interexchange carrier presubscribed to that payphone, through the negotiation process. Id. at 9. But neither MCI nor any other carrier appealed the Commission's contrary determination. Nor did the Court of Appeals cast any doubt on this issue. To the contrary, the Court of Appeals remanded to the Commission for *failing* to provide per-call compensation on those calls during the interim period. Illinois Pub. Telecom., 117 F.3d at 566-67. Surely the elimination of per-call compensation for those calls in the permanent compensation scheme would not correct the error identified by the Court of Appeals. Instead, it would compound the mistake.

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[45] Order, Bell Atlantic Telephone Companies' Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, CC Docket 96-128, DA 97-791 (rel. Apr. 15, 1997); Order, BellSouth Corporation's Offer of Comparably Efficient Interconnection to Payphone Service Providers, CC Docket 96-128, DA 97-792 (rel. Apr. 15, 1997); Order, The NYNEX Telephone Companies' Offer of Comparably Efficient Interconnection to Payphone Service Providers, CC Docket 96-128, DA 97-795 (rel. Apr. 15, 1997); Order, Southwestern Bell Telephone Company's Comparably Efficient Interconnection Plan for the Provision of Basic Payphone Services, CC Docket 96-128, DA 97-793 (rel. Apr. 15, 1997); Order, Pacific Bell and Nevada Bell Comparably Efficient Interconnection Plan for the Provision of Basic Telephone Service Order, CC Docket 96-128, DA 97-794 (rel. Apr. 15, 1997); Order, U S West's Comparably Efficient Interconnection Plan for Payphone Services, CC Docket No. 96-128, DA 97-796 (rel. Apr. 15, 1997); Order, Ameritech's Comparably Efficient Interconnection Plan for Payphone Services, CC Docket No. 96-128, DA 97-790 (rel. Apr. 15, 1997).

Besides, MCI's arguments are without merit. Nowhere does MCI even remotely address the Commission's reasoning for requiring compensation on these calls. It does not deny that, for many years, the RBOCs and GTE were unable to negotiate for compensation on 0+ calls and calls from inmate payphones because of consent decrees. Nor does it deny that, because interexchange carriers entered into long-term contracts with location owners during that period and those contracts have been grandfathered, the RBOCs and GTE are effectively precluded from obtaining compensation for those calls. It thus cannot deny that compensation is warranted.

Moreover, MCI's arguments do not in any way undermine the Commission's requirements. The Commission has required the payment of compensation on 0+ calls from RBOC and GTE payphones and on calls from RBOC and GTE inmate payphones subject to long-term contracts only "so long as [the RBOCs and GTE] do not otherwise receive compensation for use of their payphones in originating 0+ calls." Report and Order, 11 FCC Rcd at 20569, ¶ 53; Recon. Order, 11 FCC Rcd at 21259, ¶ 51. If the market does provide such compensation, as MCI contends, then there will be no compensation paid as a result of the Commission's rule. It is only because MCI knows that the market does not and cannot pay that compensation -- because carriers like MCI have locked up RBOC and GTE payphones under long-term, 11th hour contracts signed on the eve of telecommunications reform -- that it objects to this compensation requirement.

2. *Compensation For 0+ and Inmate Payphone Calls from GTE and RBOC Payphones Must Be Calculated Based on Actual Tracking Data or Average Data*

Recognizing that many OSPs are capable of tracking 0+ calls made from RBOC and GTE payphones and calls made from inmate payphones, the Commission proposed making each pre-subscribed carrier on those phones responsible for making payment on those calls. Remand

Notice at 5. For the most part, the commenters agree with this proposal. See, e.g., Sprint Comments at 15 ("Sprint believes that it has sufficient data to determine the number of 0+ calls it handled with respect to such LEC payphone calls during the interim period and thus can pay on a per-call basis"); Frontier Comments at 14 (because "[o]nly those carriers that actually handled 0+ and inmate calls received any economic benefit from those calls," only those carriers should pay); Excel/Telco Joint Comments at 7 (similar argument).

Some carriers, however, claim that they cannot calculate the number of calls from some subset, or perhaps, for all payphones. See AT&T Comments at 23 (AT&T cannot track where no commission contract is in place with location owner); MCI Comments at 9 ("MCI does not have information on the actual number of 0+ calls received from payphones"). Rather than propose that reasonable estimates be used, however, some of these carriers propose that compensation be foregone for these calls altogether. See WorldCom Comments at 7 (arguing that no 0+ compensation should be paid for calls before October 7, 1997, because doing so "would interpose call tracking requirements which may not exist today, and which are not required by the Payphone Orders until October 7").

As an initial matter, the carriers do not deny that they will be able to track compensable 0+ calls from RBOC and GTE payphones after October 7, 1997. Accordingly, there is no barrier to requiring actual tracking of these calls when true per-call compensation begins. Even as to calls that were made between April 15, 1997 and today, it is hard to believe that MCI and AT&T have no means of estimating their volume. Even if these carriers sometimes do not track 0+ calls to pay commissions to location providers (as AT&T claims), they keep track of them to bill their customers. They should be able to use those billing records to calculate the compensation they owe.

In any event, the proposal that compensation be foregone altogether from any RBOC or GTE payphone without precise 0+ tracking is untenable. If precise information about the number of 0+ calls made is not available for each and every RBOC and GTE payphone, the Commission should rely on estimated call volumes. There is simply no excuse for throwing up one's hands and announcing that no compensation will be paid at all. Doing so would be wholly inconsistent with Congress's and the Court of Appeals' mandates. Compensation is required on "each and every" payphone call, not just those where carriers have bothered to keep track. See 47 U.S.C. § 276(b)(1)(A). As the Court of Appeals held, "failure to provide interim compensation for 0+ calls is patently inconsistent with § 276's command that fair compensation be provided for 'each and every completed . . . call.'" Illinois Pub. Telecom., 117 F.3d at 566.

AT&T admits it can track calls from some payphones (namely those where it pays commissions to location owners), but says that it cannot track 0+ calls, and thus should not pay compensation, on calls from phones where it does not pay commissions and does not track. See AT&T Comments at 23. Aware that this would create a gap in compensation in violation of Congress's and the Court of Appeals' command, AT&T attempts to excuse this with speculation that the number of uncompensated calls would be relatively small. If the volume were higher, AT&T contends, the location provider would have demanded commissions and tracking would have occurred. Ibid.

Even assuming arguendo that AT&T cannot track these calls using its billing records, the argument fails for no fewer than three reasons. First, AT&T does not estimate the percentage of RBOC and GTE payphones for which it does not offer commissions. Because that number could be very large, the resulting gap in compensation could be enormous as well, even if the volume of calls from each individual payphone is relatively small. Second, there is no reason to believe

that non-commissioned phones have lower volumes than commissioned ones. Location owners might have numerous reasons for not asking for commissions, including a lack of knowledge and a relative lack of bargaining power. Indeed, given that AT&T cannot determine the volume of 0+ calls made from these payphones, it is hard to imagine that the location owner, who is not in the payphone business, would either. Third, any decision to single out a category of calls and provide no compensation for them whatsoever is simply inconsistent with the statute and the Court of Appeals.

While the Coalition is willing to accept payments based on estimated 0+ volumes, zero is simply not a realistic estimate. To the contrary, based on the data collected by Arthur Andersen and that provided by the independent PSPs, that number is in the double, not single digits. See Andersen Remand Report at 15-16; Gregory V. Haledjuar, The Numbers Are In . . ., Perspectives, August 1997, at 36 (chart) (attached to Comments of LCI).[46] Accordingly, the Commission should require payment of 0+ compensation based on actual tracking data where available, or based on Andersen's estimates if carriers insist that the data is not available.

3. *Compensation for 0+ Calls and Inmate Payphone Calls Is Appropriate Only Where Legal Impediments Preclude the Market from Paying Appropriate Compensation*

While carriers inappropriately attempt to dodge the clear implications of the Commission's orders and the Court of Appeals' mandate, various LEC PSPs inappropriately attempt to cash in on it. Arguing that they too have payphones for which commissions are not paid on 0+ calls,

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46. AT&T's further assertion that overcompensation will result in any event -- because it cannot distinguish 0+ from 10XXX calls on some phones -- is similarly wrong. 10XXX calls currently account for a very small portion of total payphone calls. For any one carrier, they are unlikely to exceed 1 call per month. See Andersen Remand Report at 14-15. Consequently, AT&T may be justified in arguing that 0+ estimates must be reduced by one call per phone per month to account for 10XXX calls that will be independently compensated. But it cannot argue that this justifies eliminating compensation for a large number of phones, and a large number of calls, entirely.

they ask the Commission to provide compensation on 0+ calls to them as well. See, e.g., Sprint Comments at 14-15; Frontier Comments at 14 n.35 (stating that "Rochester" telephone "permitted" premises owners to select a presubscribed interexchange carrier for 0+ traffic).

These commenters grossly misread the Commission's orders. The Commission concluded in no uncertain terms that, as a general rule, the market was fully capable of ensuring full and fair compensation on 0+ calls. Report and Order, 11 FCC Rcd at 20567, ¶ 49; id. at 20569, ¶ 53. Accordingly, it declined to intervene to require compensation on 0+ calls except for RBOC and GTE payphones because, with respect to those payphones and those payphones alone, legal impediments -- namely a combination of consent decrees and long-term location owner contracts entered into while those decrees were in force -- precluded the market from providing compensation. Report and Order, 11 FCC Rcd 20569, ¶ 53; Recon. Order, 11 FCC Rcd at 21259, ¶ 51. Consequently, other LEC PSPs can be considered "similarly situated" if they too can show that legal impediments precluded them, and continue to preclude them, from obtaining compensation. The fact that some LEC PSPs chose not to ask for compensation, Frontier Comments at 14 n.35, or thought it bad policy to do so, Sprint Comments at 15, is no excuse. To the contrary, since the market is fully capable of providing them with compensation -- and they remain fully capable of demanding it themselves -- the Commission has no reason to intervene in the market on their behalf.

4. *Compensation for 0+ and Inmate Calls Must Be Based on Market Valuations*

In addition to requesting comment on which carriers should pay interim compensation for RBOC and GTE 0+ and inmate payphone calls and the method for determining the number of such calls, the Commission also requested comment on the rate at which these calls should be compensated. In particular, the Commission asked whether it is appropriate to take into account

the fact that the presubscribed carrier on such a payphone "often pays a commission on such calls to the location provider." Remand Notice at 4.

No commenter has suggested that such an adjustment would be appropriate. To the contrary, interexchange carrier after interexchange carrier proposes using the same per-call compensation rate that is applied to access code and subscriber 800 calls. See, e.g., Sprint Comments at 15 (proposing use of the "default rate"); MCI Comments at 9 (proposing use of the rate the Commission establishes for subscriber 800 and access code calls). The reason for this is clear: Each of these carriers recognizes that, with respect to 0+ calls, even a default rate of $.35 falls well short of the market rate of $.90 per call.

Consequently, the Commission simply cannot establish a compensation rate for 0+ calls that is lower than the default rate for subscriber 800 and access code calls. To the contrary, to ensure full and fair compensation as required by the statute, the Commission would be well justified in establishing a rate like the $.90 rate established by the market.

D. The Commission Can Make All Changes Retroactive

Various commenters argue for and against retroactivity, based not on any pursuit of principle but rather based on each commenter's own individual interests. See, e.g., APCC Comments at 18-26 (arguing that retroactivity is appropriate if the rate goes up, but inappropriate if the rate goes down). From the Coalition's perspective, none of the arguments raised by any of the participants undermines the Commission's inherent authority to correct the impact of an unlawful order if, in hindsight, it determines that the end result was in error. Accordingly, any change to per-call compensation rates or amounts should be fully retroactive to the beginning of the compensation period, whether the change drives rates up or down.

E. The Commission Must Make Carriers Pay for Interim Compensation

For any interim compensation mechanism to work, one more issue must be made clear: Regardless of the precise contours of the scheme, participants will have to obey the Commission's orders and actually pay the compensation. While this proposition may seem obvious to the uninitiated, it has been entirely lost on the majority of interexchange carriers. Despite the uproar they have created in the press, their protestations on appeal, and the vast sums of money they have collected from their customers for the stated purpose of paying per-call compensation, most of these carriers have willfully disregarded the Commission's orders and have refused to pay a dime to Coalition members. Instead of payment, they have sought to impose conditions nowhere countenanced by the Commission (such as state certification of compliance), or imposed conditions that cannot be met (such as proof to their subjective satisfaction that eligibility requirements have been met).

This state of affairs is entirely inconsistent with the statute. It is irreconcilable with any sensible notion of fairness. And it must come to an end. The statute is clear that all PSPs, including LEC PSPs, should be fully and fairly compensated for "each and every" call made from their phones. 47 U.S.C. § 276(b)(1)(A); see also Illinois Pub. Telecom., 117 F.3d at 566 ("failure to provide interim compensation" for any class of calls is "patently inconsistent with § 276's command that fair compensation be provided for 'each and every completed . . . call.'"). To date, LECs have not received compensation for even 1 percent of the calls made from their phones. The statute is similarly clear that payphone subsidies were to be eliminated "in favor of" per-call compensation. 47 U.S.C. § 276(b)(1)(B). So far, however, payphone subsidies have been eliminated "in favor of" no compensation whatsoever.

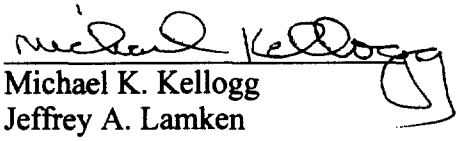
Finally, the Commission made it clear that carriers were free to pass along the reasonable costs of per-call compensation to their customers. Far from engaging in such competitively reasonable behavior, the interexchange carriers have engaged in rampant profiteering, collecting hundreds of millions of dollars in per-call compensation charges from customers, saving millions of dollars in access charges -- and vociferously blaming price increases on the Commission -- while passing nary a dime back to the PSPs to whom compensation was to be paid.

This was not what Congress had in mind when it enacted Section 276. Rather than ensuring the "widespread deployment" of payphones and the payment of "fair compensation" to LEC PSPs, anarchy has prevailed, in which carriers pay if they feel like it and don't pay if they don't. To restore order to the compensation regime, the Commission must require carriers to pay interest and penalties on any late payments. Without such a requirement, carriers have every incentive to delay payment with even the lamest of excuses, and will not pay unless compelled to do so. In addition, the Commission should impose stiff penalties on any carrier that willfully disobeys its compensation orders. Only the threat of severe financial sanction will force the current lawless behavior of interexchange carriers to come to an end.

III. The Commission Should Value Reallocated and Transferred LEC Assets at Net Book Value

As the Coalition pointed out, the Court of Appeals' order and the Commission's own precedents require the Commission to value reallocated and transferred LEC payphone assets at net book value. Despite the Commission's request for comments on the issue, no one has argued the contrary. Consequently, it is both undisputed and indisputable that LEC payphone assets must be transferred or reallocated at net book value.

Respectfully submitted,



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September 9, 1997

ARTHUR ANDERSEN

Critique of Cost Studies and Other Issues

Carl R. Geppert

September 9, 1997

Critique of Cost Studies and Other Issues

Arthur Andersen LLP ("Arthur Andersen") was asked to perform four studies for the RBOC/GTE/SNET Payphone Coalition, which includes Ameritech Corporation, The Bell Atlantic telephone companies, BellSouth Corporation, GTE Service Corporation, Pacific Telesis Group, Southern New England Telephone Company, Southwestern Bell Telephone Company and US West, Inc., ("Coalition"), in response to Comments filed by various interexchange carriers ("IXCs") and Independent Payphone Providers ("IPPs").

- We determined whether the incremental cost study prepared by New England Telephone ("NET"), in response to their petition for an increase in local coin rates in the state of Massachusetts, is representative of the fully embedded costs of operating payphones nationwide. It was not.
- We determined whether the results of the incremental coinless station cost study prepared by AT&T is representative of the fully embedded costs of operating all payphones. It was not.
- We determined whether a correlation exists between access code and subscriber 800 revenue and total toll revenue for both IXCs and local exchange carriers ("LECs"). There is none.
- We amended Section I.A of our earlier report ("Net Avoided Cost Methodology Based Upon Competitive Local Coin Rate") to compensate for additional cost categories related exclusively to access code and subscriber 800 calls. This change adds $0.05 of additional costs attributable to only dial around and subscriber 800 calls. These costs represent uncollectibles, interest costs on dial around and subscriber 800 compensation receivables and collection administration costs.

SECTION I: NET'S MASSACHUSETTS INCREMENTAL COST STUDY IS NOT REPRESENTATIVE OF THE FULLY EMBEDDED COST OF OPERATING PAYPHONES

Several IXCs, including AT&T, MCI and Sprint, reference the results of NET's Massachusetts incremental cost study ("the NET Study") as a benchmark for their own per-call cost calculations[1]. In response, the Coalition requested Arthur Andersen to review the study to determine whether the results are indicative of the fully embedded costs of providing payphone services. In summary, any incremental cost study is not representative of the total cost of providing payphone calls and should not be used as a proxy for the cost of carrying an access code or subscriber 800 call. Moreover, the incremental costs to payphone service providers ("PSPs") in Massachusetts are not representative of total PSP costs in other parts of the nation.

A. The NET Study Is An "Incremental" Cost Study, Not A Fully Embedded Cost Study

The methodology followed in responding to the Commonwealth of Massachusetts Department of Public Utilities entailed analyzing the forward looking average "incremental" costs of providing payphone service. Through my discussions with various NET personnel responsible for preparing the study, forward looking incremental cost studies are mandated by the Commonwealth of Massachusetts when petitioning for rate changes. By definition, an incremental cost study does not include many fixed costs associated with running a payphone business unit. Several examples of the common fixed costs that are routinely excluded from forward looking incremental cost studies are accounting and finance, human resource,

[1] See, AT&T Comments (August 26, 1997), page 12 [hereinafter "AT&T Comments"]; See, MCI Comments (August 26, 1997), page 5 [hereinafter "MCI Comments"]; See, Sprint Comments (August 26, 1997), pages 8-9 and AttachmentA [hereinafter "Sprint Comments"].

information management and legal costs. Despite these costs not fluctuating with the installation of additional payphones, they are essential to the provision of payphone service and should be included in calculating the total or fully embedded per-call cost.

B. NET's Study Is Not Representative of All Payphone Operations

The forward looking incremental costs included in the NET Study are not representative of the costs incurred by other payphone operations, such as NET's operations in other states and operations of other Coalition members.

There are many differences between states and companies in terms of the cost of providing payphone service. Extrapolating from one state or one company to the payphone industry as a whole is not appropriate. The following example illustrates how the NET Study is not representative of the entire payphone industry:

- Basic Line Charge: Access line charges vary widely within NET's calling area and throughout the United States. For example, the basic line charge (including touchtone) in Massachusetts is $22.24[2] per month. The same line charge in Vermont is more than double, at $49.36[3] per month. Rates higher than those in Massachusetts are not uncommon throughout the United States. For example, the average measured service line charge in BellSouth's calling territory is approximately 75% higher than the rate in Massachusetts.[4]
- Number of Calls: The total number of calls carried by the average payphone varies widely depending upon the location of the phone. For example, the average NET

[2] Provided by Coalition member.
[3] Provided by Coalition member.
[4] See, AT&T Comments, Affidavit of David Robinson (August 26, 1997), Appendix 2 [hereinafter "Robinson Affidavit"].

payphone in New Hampshire carries only 70%[5] of the call volume of an average NET payphone in Massachusetts. The comparison is more dramatic for Maine and Rhode Island where the average payphone carries only 53% and 61%,[6] respectively, of the calls of an average NET payphone in Massachusetts. Even in Vermont, where the line charge is double the rate in Massachusetts, the call volumes are lower. Ignoring line charge differences between states, the average cost per call increases dramatically when monthly call volumes decrease.

Considering all of the above, we conclude that the results of the NET Study are not representative of the fully embedded costs of operating payphones nationwide. Indeed, our calculation of average costs for Coalition members showed that not one Coalition member had average total costs per call as low as the incremental cost figure produced by the NET Study.

SECTION II: REVIEW OF AT&T'S INCREMENTAL COINLESS PAYPHONE STUDY

AT&T's Comments suggest that a fair cost-based compensation rate is 11 cents per call.[7] In response, the Coalition asked Arthur Andersen to review AT&T's calculations to determine whether the per-station and per-call figures presented by AT&T accurately represent the cost of providing payphone services. In summary, AT&T's incremental coinless payphone study is very similar in nature to the Hatfield report presented by MCI in their Comments dated October 10, 1995. Consequently, the same flaws we identified in our July 15, 1996, critique of the Hatfield report are also present in AT&T's study, as explained below. As a result, we

[5] Provided by Coalition member.
[6] Provided by Coalition member.
[7] See, AT&T Comments, page 11.